

**03-221 PLILER v. FORD**

Ruling below: CA 9, 305 F.3d 875, amended 330 F.3d 1086

QUESTIONS PRESENTED

1. This Court held over twenty years ago that "a district court must dismiss habeas petitions containing both unexhausted and exhausted claims." *Rose v. Lundy*, 455 U.S. 509, 522 (1981). The question presented is:

Whether the dismissal of such a "mixed" habeas petition is improper unless the district court informs the petitioner about the possibility of a stay of the proceeding pending exhaustion of state remedies and advises the petitioner with respect to the statute of limitations in the event of any refiling.

2. Under Federal Rule of Civil Procedure 15(c), "[a]n amendment of a pleading relates back to the date of the original pleading when relation back is permitted by the law that provides the statute of limitations applicable to the action, or [¶] ... the claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading ...." The question presented is:

Whether a second, untimely habeas petition may relate back to a first habeas petition, where the first habeas petition was dismissed and the first proceeding is no longer pending.

CERT. GRANTED: 1/9/04